

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of the Commission's
Rules to Preempt State and Local
Regulation of Tower Siting For
Commercial Mobile Services Providers

)
)
)
)
)
)

RM-8577

DOCKET FILE COPY ORIGINAL

Comments of the NYNEX Mobile Communications Company

NYNEX Mobile Communications Company ("NMCC") hereby files these
comments in support of the Petition For Rulemaking ("Petition") filed on December 22,
1994 by the Cellular Telecommunications Industry Association ("CTIA").

I. INTRODUCTION AND SUMMARY

In its Petition, CTIA asks the Commission to issue a Notice of Proposed
Rulemaking proposing to exercise its authority under Sections 2(b) and 332 of the
Communications Act to preempt state and local governments from enforcing zoning
and other similar regulations which have the purpose and effect of barring and
impeding commercial mobile radio service providers ("CMRS") from locating and
constructing new towers.¹ CTIA argues that preemption of tower site regulations is
required to ensure the availability of high quality and ubiquitous wireless services.²
NMCC agrees. State and local regulations that delay, increase the costs of, or impose
significant additional regulatory burdens upon wireless services licensed by the

¹ Petition at 1-2.

² Petition at 2.

No. of Copies rec'd
List ABCDE

AY

Commission unduly impact when and whether federally authorized wireless services will be introduced. In Section II of these comments, we show that the Commission has the legal authority to adopt rules preempting state and local zoning authority in connection with FCC-regulated Commercial Mobile Radio Services ("CMRS"). In Section III, we demonstrate that the Commission must preempt state and local regulation of transmission sites in order to ensure the ubiquitous development of wireless services. In this regard, we provide the Commission with specific examples illustrating how state and local regulations have obstructed NMCC's efforts to construct tower facilities needed to improve existing services or meet increasing customer needs.

II. THE FCC HAS THE AUTHORITY TO PREEMPT STATE AND LOCAL REGULATIONS THAT THWART THE FCC'S POLICIES FOR WIRELESS SERVICES

NMCC agrees with CTIA's legal conclusion that the Commission has the authority to preempt state and local zoning regulations that impede the development of wireless services. CTIA's Petition correctly observes that the Commission has the power, when "acting within the scope of its congressional delegated authority," to preempt state or local regulation which conflicts with federal law and "stands as an obstacle to the accomplishment and execution of the full objectives of Congress."³ This preemptive authority is grounded in the Supremacy Clause of the U.S. Constitution, Art. VI, cl. 2, which empowers Congress to preempt state and local law and to confer its power on Federal agencies.⁴ Section 1 of the Act makes clear that

³ Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 368-69 (1986) (citing Hines v. Davidowitz, 312 U.S. 52 (1941)).

⁴ CTIA Petition at 2. CTIA correctly describes the basis for preemption as "(1) a clear expression of intent to preempt; (2) when the state and federal laws directly conflict; (3) where compliance with both state and federal law is physically impossible; (4) where there is an implicit barrier to state regulation; (5) when Congress occupies the field, i.e., it has legislated comprehensively and

Congress intended the Commission "to make available, so far so possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151. The Act grants the Commission the authority to "make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions." 47 U.S.C. § 154(l). As revised by the Omnibus Budget Reconciliation Act of 1993, Section 332 of the Communications Act provides that the Commission's purpose in connection with wireless services is to ensure that mobile services are uniformly, albeit minimally, regulated in a manner that promotes efficiency and competition.⁵

These important federal policies cannot be achieved if state and local zoning regulations are allowed to obstruct, unduly delay or prohibit the construction of transmitter sites needed to provide new or expanded wireless service. Where, as here, state or local regulation impedes, delays or prevents the construction or operation of cell sites for wireless services, thereby preventing the expeditious and efficient provision of new or expanded communications services,⁶ the Commission can, and should, exercise its preemptive authority in order to accomplish the policies Congress has directed it to promote.⁷

there is no room for supplemental state law; or (6) when the state law stands as an obstacle toward accomplishing the full objectives of Congress." CTIA Petition at 3.

⁵ Section 332 severely limits a state's ability to regulate mobile services through regulation that "directly or indirectly impede entry, either entirely or partially (e.g., through added cost or delay) by their regulation of "other terms and conditions."

⁶ Section 332 provides specific examples of how state and local zoning regulation impose costs and other regulatory burdens on FCC licensees that make it more difficult or costly to provide service. In many instances, state and local regulation acts to bar completely the provision of cellular service.

⁷ In the unlikely event that the Commission concludes that the record in this proceeding is inadequate to warrant preemption, the Commission should initiate hearings to take testimony on, and make findings with respect to, the adverse impact local regulation (in the form of

The Commission's preemption of state and local zoning regulations affecting transmitter sites is not foreclosed by Section 2(b) of the Communications Act. It is well established that Section 2(b) does not limit the FCC's authority where the exercise of state jurisdiction over communications facilities would, as a practical matter, negate the federal regulation. In such instances, federal jurisdiction must prevail.⁸ The Commission's exercise of its preemptive power over state and local zoning regulations would be consistent with past actions the Commission has taken to ensure that federal goals and policies are achieved. Thus, the Commission has preempted state regulation of satellite dishes and towers in order to "foster the development of national communications service."⁹ The Commission has also preempted state and local regulations that impede the interstate operation of FCC-authorized facilities in order to ensure that the licensed facilities may operate in accordance with the standards and policies set by the Commission.¹⁰

III. THE LOCAL REGULATION OF TOWER SITES HAS SEVERELY IMPEDED NMCC'S ABILITY TO PROVIDE IMPROVED CELLULAR SERVICE AND SIGNIFICANTLY INCREASED THE COST OF PROVIDING SERVICE

There is attached hereto as Attachment I, the affidavit of C. Clinton Smith, NMCC's Director of Engineering for Technical Services. Mr. Smith makes it clear that NMCC's tower site selection process is designed to meet coverage and capacity requirements in the most efficient and cost effective manner. To the extent that

moratoriums, zoning laws, building codes, or architectural review) has on the development of the wireless portion of the National Information Infrastructure.

⁸ See also, Louisiana Public Service Comm'n v. FCC 476 U.S. at 375-76 & n.4. citing North Carolina Utilities Comm'n v. FCC, 537 F.2d 787 (4th Cir.), cert. denied, 429 U.S. 1027 (1976), and North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977)). See also, CTIA Petition at 10-13.

⁹ Earth Satellite Communications, Inc., 95 FCC 2d 1223, 1227 (1983).

¹⁰ Amateur Radio Facilities, 101 FCC 2d 952 (1985).

zoning regulations unduly delay or preclude the construction of towers in their most optimal location, quality of service is compromised and the cost of providing service is unnecessarily increased. The local regulation of tower sites in NMCC's cellular areas has had this negative effect.

The adverse effect of local zoning regulations on NMCC's provision of service has been most pronounced in Westchester County, New York. The deployment of cellular telephone antennas (whether using monopoles or roof mounted panels) in Westchester County has effectively been brought to a standstill as a result of the enactment of restrictive zoning regulations.¹¹ In some instances, towns and villages have adopted moratoriums on the erection of antennas, completely derailing the pending zoning applications of cellular carriers.¹² In other instances, local municipalities have either proposed or enacted zoning amendments which effectively allow these municipalities to indefinitely block the deployment of antennas,¹³ to dictate where antennas may be located without regard to the coverage requirements of the cellular carrier,¹⁴ or to specify the operating characteristics of cellular transmitters without regard to established industry standards.¹⁵ Other local zoning laws proposed

¹¹ Copies of the moratorium decisions and zoning amendments proposed or enacted in Westchester are appended to these comments as Attachment 2. These local initiatives exist despite the NYS Court of Appeals ruling that cellular phone carriers are "public utilities" and therefore entitled to deference in all zoning matters. See, Cellular Telephone Company v. Rosenberg, 82 N.Y.2d 364, 604 N.Y.S.2d 895 (1993) (wherein the Court of Appeals of the State of New York declared that a cellular antenna company was a public utility).

¹² See Attachment 2 at Exhibits 2, 3 and 4.

¹³ Id.

¹⁴ See Attachment 2 at Exhibit 2. Tarrytown requires that antennas be more than 500 feet away from any other communications device. This 500' spacing requirement which, significantly, and without justification, limits the number of cellular antennas in the Village based on a nebulous formula specified in the local law, is far more stringent than any federal rules.

¹⁵ See Attachment 2 at Exhibit 6. The Town of Mamaroneck and Village of Tarrytown provide that cellular antennas may operate at only one-fourth of the NCRP, ANSI or IEEE standards and that measurements be provided to demonstrate compliance with the restrictive local standard.

by Westchester municipalities act to ban cellular antennas from residential and adjacent areas and, by default, require cellular carriers to locate their facilities on municipally-owned property.¹⁶

The enactment of moratoriums act, of course, as an absolute bar to the provision of cellular service in the affected area. However, even in instances when local regulators do not pass measures or enact rulings that impose moratoriums on tower site construction, protracted zoning hearings introduce significant delays, which often have the same effect as a denial of zoning authority. As Mr. Smith sets forth in his affidavit, NMCC secures lease options prior to attempting to secure zoning approval. In those instances in which a delay in the zoning process causes one of its lease options to expire, and NMCC is unable to renew the lease, NMCC incurs significant additional costs associated with selecting new properties and going through additional hearing processes.

The impact on NMCC caused by protracted delays in the zoning process is illustrated by the following example. Early in 1993, NMCC determined, following its normal network planning process, that a cell site was needed in the Town of Mamaroneck. In early April, NMCC obtained lease options on two locations within the town and filed applications with the Town of Mamaroneck for both sites. The hearing process was met with delays, resulting in part from health concerns raised by the community. Ultimately, a moratorium was imposed on tower site construction in the Town. During this lengthy process, both lease options expired and the landlords that maintained the properties refused to renew NMCC's lease options. Once the lease options expired, the zoning applications became null and void and NMCC was forced to begin the process again with another less optimal site.

¹⁶ See Attachment 2 at Exhibit 2.

In October, 1994 NMCC located an alternate property within the Larchmont section of Mamaroneck, executed a lease for that property and filed an new application with the town. But, because the existing moratorium was extended, NMCC's Larchmont application remains pending awaiting the planning board's review. We estimate that, to date, NMCC has spent in excess of \$80,000 on fees associated with securing zoning approval in the Town of Mamaroneck. Just as critical, the service needs which the site was intended to address remain unresolved although almost a full year has passed since the application was initially filed.

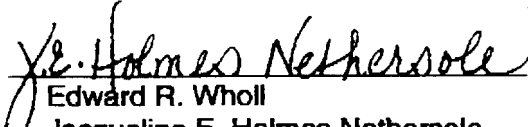
The adverse impact on the quality and cost of service caused by the restrictive local zoning laws adopted by local communities in Westchester County are illustrative of the problems faced by NMCC throughout its many service areas. In 1994, NMCC responded to a survey conducted by CTIA to ascertain the magnitude of the problems imposed by the local regulation of tower sites. Our response to CTIA documents over 63 instances in which local regulations either delayed or foreclosed the construction of cell sites. Each case reported tells a common story: the delay or denial of zoning approval resulted in no service or exceptionally poor service being provided to an area. In each case, NMCC incurred significant costs in attempting to secure the required zoning approvals. In each instance where zoning approval was denied, NMCC had to incur the additional costs associated with finding another suitable (although not optimum) location. Such results simply cannot be squared with the Commission's goal to expand cellular, and other wireless services, to as many people as possible at affordable prices.

IV. CONCLUSION

Congress has determined that a uniform, national regulatory policy would foster the expeditious, efficient development of competitively provided wireless services. The multitude of diverse, conflicting local requirements imposes substantial costs and regulatory burdens upon wireless service providers in direct conflict with these goals. For these reasons, the Commission should grant CTIA's Petition immediately and act to preempt local regulation of wireless transmission facilities which would interfere with a federal licensee's efforts to provide seamless coverage in its service area.

Respectfully submitted,

NYNEX Mobile Communications Company

By: 
Edward R. Wholl
Jacqueline E. Holmes Nethersole

120 Bloomingdale Road
White Plains, N.Y. 10605
914-644-5735

Its Attorneys

Dated: February 17, 1995

ATTACHMENT 1

AFFIDAVIT OF C. CLINTON SMITH

State of New York

County of Rockland

Affidavit of C. Clinton Smith

C. Clinton Smith, being first duly sworn, hereby deposes as follows:

1. I am the Director of Engineering for Technical Services, South for NYNEX Mobile Communications Company ("NMCC"). NYNEX Mobile Communications Company is a wholly owned subsidiary of NYNEX Corporation. I have held this position since February, 1994. In my present capacity as Director, I am responsible for leading and directing the Engineering departments for the New York Metro system of NYNEX Mobile. Some of the specific responsibilities of my position involve planning and budgeting for current and future network needs. Additional functions involve RF (radio frequency) Design, Network and Interconnect Design, System Performance, Software Engineering and Wireless Data Transport Technologies.

2. In the course of these activities, it has become clear to me that the amount and diversity of state and local zoning regulation of tower sites is the major impediment to NMCC's network planning goals. The fact that different, unpredictable procedures and rules exist within each municipality makes it impossible to meet customer needs in an efficient, cost-effective manner. NMCC's network planning activities are based, first and foremost, on meeting the needs of our growing customer base. NMCC's tower site selection process is designed to meet coverage and capacity requirements in an efficient,

cost-effective manner. In order to satisfy our customers needs, we undertake an extensive and detailed process to determine when and where facilities should be built.

3. I make this affidavit in support of NMCC's comments in connection with the Petition for Rule Making filed by the Cellular Telecommunications Industry Association. The petition requests an amendment of the Commission's rules to preempt state and local regulation of tower siting for CMRS providers. This affidavit describes procedures followed by NMCC in planning and developing our network and determining when additional cell sites are warranted and where those sites should be located.

4. NMCC follows an extensive process in determining network plans which include cell site locations. NMCC selects potential tower sites by way of a process that begins long before an application is submitted to a local zoning authority for approval. That process, which involves the detailed analysis of demand and demographics as well as economic and technical considerations, is followed to determine when and where a tower must be constructed. After a potential tower site location is selected, NMCC negotiates a lease with the landlord or property owner and, then, submits the construction application to the appropriate local authority for review. Once submitted for local approval, the construction application is likely to be subject to a lengthy review process that involves meetings, data submissions and hearings.

5. The initial step and a key component in the cell site selection and lease approval process is an annual growth study performed by NMCC marketing and technical staff. The growth study uses empirical and analytical data to develop a cell site growth plan which meets technical and marketing requirements for the upcoming year. The study, which is updated on a quarterly basis, identifies potential network needs through analysis

of coverage and capacity requirements derived from subscriber growth throughout the network. Marketing input used in the study includes subscriber growth, usage requirements, customer programs and new services or service enhancements. This data is analyzed to project network needs. The technical staff then analyzes the current network configuration and determines coverage and capacity needs. This is then used to develop one and two year network plans using empirical and analytical data which specify where the cell sites should be placed based by RF engineering.

6. Effective implementation of network plans requires the ability to plan cell sites within a limited search area. In the implementation phase of building or expanding our network, the Engineering Department issues search area requests to the Real Estate Department. Each search area defines a radius for optimum placement of the cell site, which is generally smaller than a one mile radius. This optimum search area becomes smaller as the network expands, limiting our flexibility to expand our network to meet customer demand in the event that a state or local municipality deny zoning approvals. The Real Estate Department seeks to find property that meets the search criteria and forwards the locations to the RF Engineering Department. RF determines the validity of each location using empirical and analytic data. Once accepted the site is referred to the Construction Department. NMCC's Construction Department reviews the site to insure it meets building requirements and subsequently contracts with an architectural engineering firm to complete the design. Leases are negotiated with the landlords and NMCC prepares a presentation for the local planning and zoning boards.


7. The final phase of NMCC's plan is dependent upon approval of the planning and zoning boards of local municipalities. Most local municipalities require planning and/or


zoning board approvals prior to cell site construction. NMCC now must plan for between 18 months and two years to obtain planning and zoning approvals. In order to obtain the necessary building permits NMCC is often required to present our plan at several local hearings. This can be an extremely time consuming process with each step taking from one and one half to two months:

- Step One: File for permit - if rejected - see Step Two
- Step Two: Planning Board Hearings (One and one half months)
- Step Three: Zoning Board Hearing (One and one half months)
- Step Four: Architectural Review Board hearing (if necessary)
- Step Five: Planning Board Hearings Second Visit (One and one half months)
- Step Six: Subsequent Planning Board Meeting (to approve the minutes from the previous Planning Board Meeting)
- Step Seven: Zoning Board Approval/Denial

Following the approval of both the local Planning and Zoning Boards and the granting of appropriate construction permits cell site construction can then commence.

8. As demonstrated by NYNEX Mobile's experiences, local zoning laws significantly impair our ability to provide high quality services to satisfy customer's demands. For these reasons, the FCC must establish uniform federal zoning regulations.


PATRICIA A. CROAL
NOTARY PUBLIC, State of New York
No. 4952892
Qualified in Rockland County
Commission Expires June 26, 1995


2-16-95

ATTACHMENT 2: MORATORIUM EXHIBITS

EXHIBIT 1

LOCAL LAW No. 7 1994

This Local Law shall be known as "Moratorium on Placement of Cellular Telephone Antennas".

BE IT ENACTED by the Town Board of the Town of Mamaroneck as follows:

1. This Local Law shall be known and cited as Moratorium on Placement of Cellular Telephone Antennas.

2. Purpose and Intent:

The Town Board is cognizant of the concern within the community of potential impacts to public health, safety and welfare of cellular telephone antennas. Antennas emit electromagnetic fields and there is a public perception that exposure to those fields at certain distances may adversely affect the health of individuals who are exposed. At the present time the Town of Mamaroneck has no specific regulations with respect to the placement of cellular telephone antennas.

It is the intent of this Local Law to provide for a moratorium on placement of such antennas so that the Town Board may have an opportunity to investigate the public perception of the effects of these antennas and the concomitant impact of any such perception on matters within the jurisdiction of the Town. In particular, the Town Board wants to consider the potential impact of such structures on property values in particular zoning districts, and on the visual aesthetic character of the Town, and to determine whether it is appropriate to adopt zoning changes with respect to cellular telephone antennas to protect these values. The Town Board recognizes that this is a highly regulated area which is largely pre-empted by the Federal government. However, the Board believes that it is within its authority to adopt limited regulations, if warranted, to protect traditional zoning objectives.

The Town Board is further aware that cellular telephone transmissions are an important form of communication and is adopting this moratorium for a limited period so as to avoid, to the greatest extent possible, interference with the plans of providers of cellular telephone service.

3. This Local Law shall apply to all properties within the Town of Mamaroneck.

4. Scope of Controls

A. During the effective period of this law:

- 1) The Planning Board shall not grant any preliminary or final approval to a subdivision plat, site plan, special permit or wetlands permit which would have as a result the erection of a cellular telephone antenna.
- 2) The Zoning Board of Appeals shall not grant any variance or special permit for any use which would result in the erection of a cellular telephone antenna.
- 3) The Building Inspector shall not issue any permit which would result in the erection of a cellular telephone antenna.

B. The foregoing restrictions shall not apply to the following:

- 1) Certificates of Occupancy for any and all construction made pursuant to Building Permits issued prior to the effective date of this Local Law.

C. The Town Board reserves the right to direct the Building Inspector to revoke or rescind any Building Permits or Certificates of Occupancy issued in violation of this Local Law.

5. No consideration of new applications:

No applications for construction affected by this Local Law or for approvals for site plan, subdivision, variance, wetlands permit, or special permit shall be considered by any board or agency of the Town of Mamaroneck while this Local Law is in effect. Nothing in this Local Law shall preclude an applicant for such proposed construction from having a maximum of two informal conferences with an appropriate board or agency while this Local Law is in effect.

6. Term

This Local Law shall be in effect for a period of 90 days from its effective date.

7. Penalties

Any person, firm or corporation that shall construct, erect, enlarge or alter any cellular telephone antenna in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

- A. Such penalties as may otherwise be provided by the laws, rules and regulations of the Town of Mamaroneck for violations; and
- B. Injunctive relief in favor of the Town of Mamaroneck to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction which may have taken place in violation of this Local Law.

8. Validity

The invalidity of any provision of this Local Law shall not effect the validity of any other provision of this Local Law which can be given effect without such invalid provision.

9. Superseding other laws

- A. All laws, ordinances, rules and regulations of the Town of Mamaroneck are hereby modified and superseded by this Local Law with respect to their application to the subject matter of this Local Law for the 90-day term of this Local Law.
- B. This Local Law shall modify and supersede with respect to its application and for the term of this Local Law the following provisions of the Town Law of the State of New York: Sections 267-a, 267-b, 274-a, 274-b, 276 and 277.

10. Hardship

- A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law then the owner of said property may apply to the Town Board in writing for a variation from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law unnecessary hardship shall not be the mere delay in being permitted to make an application for a variance, special permit, site plan, wetlands permit, or subdivision during the pendency of this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall within 30 days of receipt of said application schedule a Public Hearing on said application upon five days written notice in the Official Newspaper of the Town. At said Public Hearing the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall within 15 days of the close of said Public Hearing render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

C. Any party aggrieved by the determination of the Town Board on an application for a variation from the strict compliance with this Local Law may appeal said decision to the Supreme Court, State of New York, Westchester County, pursuant to Article 78 of the Civil Practice Laws and Rules within 30 days of the filing of said decision in the Office of the Town Clerk.

11. Effective Date

This Local Law shall take effect immediately.

LOCAL LAW No. , 1994

This Local Law shall be known as "Amendment to Local Law No. 7, 1994, Moratorium on Placement of Cellular Telephone Antennas".

BE IT ENACTED by the Town Board of the Town of Mamaroneck as follows:

1. This Local Law shall be known as Amendment to Local Law No. 7, 1994, "Moratorium on Placement of Cellular Telephone Antennas".

2. Purpose and Intent:

The Town Board, on August 17, 1994, adopted Local Law No. 1994, known as Moratorium on Placement of Cellular Telephone Antennas, which provided for a moratorium, for a period of ninety (90) days from adoption, on any action which would permit the erection of a cellular telephone antenna within the Town of Mamaroneck.

Since the adoption of the Moratorium the Town Board has retained the services of Cleary Consulting, planning and environmental consultants, for the purposes of undertaking a study of the Town's land use regulations with respect to placement of cellular telephone antennas within the Town of Mamaroneck.

As a result of the study Cleary Consulting has advised that they will recommend certain amendments to the Town Zoning Ordinance with respect to the citing of cellular telephone antennas within the Town so as to address aesthetic, as well as public health and safety concerns arising from the proliferation of these antennas.

Town regulations and State statute require that prior to the adoption of a zoning amendment that such amendment be referred to the Town of Mamaroneck Planning Board and to the County Department of Planning and, further, that the Town undertake compliance with the State Environmental Quality Review Act. It will be impossible to review the proposal of our consultant and to implement any changes before the expiration of the initial ninety (90) day moratorium period. It is, therefore, the purpose of this Local Law to amend Local Law No. 7, 1994 for the purposes of extending the moratorium so as to allow the Town to complete its study and adoption of regulations based upon that study and to maintain the status quo pending the adoption of those regulations so as not to render the Town's efforts to review these uses moot.

3. Section 6 of Local Law No. 7, 1994 is hereby amended to read as follows: "This Local Law shall be in effect until February 15, 1995."

4. Severability

Should any provision of this Local Law be declared unconstitutional or invalid by any court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not affect any other provisions of this Local Law which may be implemented without the invalid or unconstitutional provision.

5. Effective Date

This Local Law shall take effect immediately.

EXHIBIT 2

LOCAL LAW NO. 1995

This Local Law shall be known as "Amendment to the Zoning Ordinance Establishing Regulations for Cellular Telephone Facilities".

BE IT ENACTED by the Town Board of the Town of Mamaroneck as follows:

1. This Local Law shall be known and cited as Amendment to the Zoning Ordinance Establishing Regulations for Cellular Telephone Facilities.

2. PURPOSE:

The purpose of these regulations is to promote the health, safety and general welfare of the residents of the Town of Mamaroneck through the establishment of minimum standards to reduce the adverse visual effects of telecommunications transmission towers and antennas through careful design, siting and screening; to preserve residential property values; to avoid potential damage to adjacent properties from tower failure through proper engineering and careful siting structures; to maximize the use of existing towers or antenna host sites so as to minimize the number of towers needed to serve the town; and to assure that radiation emitted by such telecommunications equipment will comply with applicable standards.

3. Article I. Section 89-3 - Definitions:

Section 89-3 shall be amended by adding the following definitions:

PUBLIC UTILITY - Persons, firms or corporations supplying gas, electricity, water, power, transportation or telephone service (excluding cellular telephone service) to the general public.

PUBLIC UTILITY FACILITY - The machinery and equipment including pipes, lines, wires, and/or other conductors or conduits, materials, apparatus, tools, vehicles, supplies and storage facilities used by "Public Utilities".

CELLULAR TELEPHONE FACILITY - All facilities, equipment, apparatus and devices used for cellular telephone communications.

4. Article III. Section 89-19.1. Public Utility & Cellular Telephone Facility:

Add a new section 89-19.1 which shall read:

(a) Required Conformity - No Cellular Telephone Facility shall hereinafter be used, erected, moved, reconstructed, changed, or altered unless in conformity with the following specific regulations.

(b) Exceptions - Exceptions to these regulations are limited to (i) new uses which are accessory to residential uses, so long as the height of any such use does not exceed the elevation of the surrounding neighboring treeline, and (ii) approved uses existing prior to the effective date of these regulations.

(c) Site Plan - (i) An applicant seeking approval for a telecommunications tower or antenna is required to submit a site plan in conformance with applicable site plan submission requirements. The site plan shall show all existing and proposed structures and improvements, and shall include documentation on the proposed intent and capacity of the use, as well as justification for the height of any tower or antenna.

(ii) The Planning Board shall require that the site plan submission include a completed Visual Environmental Assessment Form (Visual EAF), and if applicable, a landscape plan addressing other standards listed in this section, with particular attention to visibility from key viewpoints identified in the Visual EAF, existing treelines, and proposed elevations.

(iii) A safety analysis described in section (e) below.

(iv) A report shall be submitted, prepared by a licensed professional engineer which, in the case of a tower, describes the tower height and design including a cross section of the structure; demonstrates the tower's compliance with applicable structural standards; and describes the tower's capacity, including the number and type of antennas it can accommodate. In the case of an antenna mounted on an existing structure, the report shall indicate the existing structure's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.

(d) Shared Use - The shared use of existing towers and antenna facilities shall be preferred to the construction of new such facilities. The applicant shall submit an adequate report inventorying existing towers and antenna sites within a reasonable distance from the proposed site outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed tower or antenna cannot be accommodated on an existing approved tower or facility due to one or more of the following reasons:

1. The planned equipment would exceed the structural capacity of existing and approved towers and facilities, considering existing and planned use for those facilities.